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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

ePLUS, INC.

vs.

LAWSON SOFTWARE, INC.

Civil Action No.  
3:09CV620

January 24, 2011

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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EXHIBIT

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1 choice. And that doesn't stop ePlus from going to the  
2 Patent Office, but it is true and the Judge will  
3 instruct you that even if a product isn't the subject  
4 of a patent like TV/2, if it's on sale more than a  
5 year before the filing date of the ePlus patent, it's  
6 still prior art. EPlus can't go get a patent on that  
7 same thing. So that's how it works. So that's why  
8 the Patent Office doesn't always have all the details  
9 about what everybody is doing out there.

10 So that's why because you have this critical  
11 information here in the courtroom that the Patent  
12 Office didn't get why you should reach a different  
13 conclusion from the Patent Office. So that's why you  
14 should decide that the claims are invalid.

15 Let's go down to question No. 3 about  
16 infringement. We made it pretty clear from the first  
17 moment in this case that this issue came down to the  
18 catalogs issue.

19 And if we could go to 45F. Mr. Weaver at  
20 least acknowledged that 11 of the 12 claims in this  
21 case required not just one catalog, but multiple  
22 catalogs in the Lawson system. So if Lawson doesn't  
23 have multiple catalogs, Lawson at least does not  
24 infringe those 11 claims. We're all on the same page  
25 on that. That's why we didn't waste your time on all

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1 these other deals in the case, why it really came down  
2 to the catalogs.

3 And if we go to the slide 46, this was the  
4 Court's definition of catalogs. It has the term  
5 published by a vendor in it, and the Court also has an  
6 instruction for you on that.

7 And we showed you here, this is Exhibit 257,  
8 it's a demonstrative, but it's nothing of the sort you  
9 haven't seen before. It's one of these big catalogs.  
10 We don't get them in the mail so much anymore, but we  
11 used to. And something like this pretty clearly meets  
12 that Court definition. You can apply this pretty  
13 well. It's an organized collection. You have got the  
14 ladies clothes at the beginning. Then it goes to kids  
15 and boots and shoes and so on, product by product  
16 organized. It's about items. Things Sears is selling  
17 with associated information. Published by Sears.  
18 They are a seller, a distributor, whatever you want to  
19 call it. Includes things like a part number, price,  
20 catalog number, vendor name. Sears is on the front.  
21 It may not be on every page, but certainly on the  
22 front.

23 I don't know if it has a vendor ID, but this  
24 list isn't something that's required that you have to  
25 have all of these. That's why it has the word

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1 preferably, right? Then a textual description of  
2 items and preferably, not necessarily, images of the  
3 items.

4           So that meets the definition of a catalog  
5 pretty well. That holds up with your common sense.  
6 And it's pretty consistent if we go to slide 48, I  
7 think it is. Even what the patent says about  
8 catalogs. This is a feature of the invention to have  
9 multiple catalogs from different suppliers. And it  
10 gives these examples. And I'll summarize it here, but  
11 basically it talks about published by a vendor,  
12 distributor, having the distributor's catalog numbers  
13 for their listed products. And also vendor  
14 manufacturer part numbers. Down at the bottom, line  
15 52 there, it further contained catalogs published by  
16 some of the vendor manufacturers. Again having part  
17 numbers and the like.

18           Then if you go down to about line 56. It can  
19 also contain catalogs published by outside suppliers,  
20 other manufacturers, distributors listing their vendor  
21 products different from those in the distributor  
22 catalog. So these are all these different published  
23 things out there.

24           So if we go back to 46. So that was the  
25 Court's definition of "catalog." Very consistent with

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1 what the patent says. What about that last claim?  
2 I'll just talk about that a little bit. That 12th  
3 claim. That's Claim 1 of the '172 patent.

4 Now, that claim has a claim element that  
5 refers to something called an order list. So I want  
6 to show you the Court's definition of that in slide  
7 49. So even that claim requires a means for  
8 generating an order list, which is a list of desired  
9 catalog items. So here's where that concept of  
10 catalog comes into play here.

11 And if we look at slide 49A, Dr. Weaver, his  
12 analysis was entirely reliant on his opinion that the  
13 Lawson system had catalogs in it. And that even  
14 included this claim.

15 And if we could go to the next slide here.  
16 This was Dr. Weaver's testimony specific to that Claim  
17 1 of the '172 patent. It's kind of a long question  
18 here, but what's being shown here is his opinion about  
19 Lawson infringing that claim, and specifically the  
20 part of that claim that refers to an order list, that  
21 was based in part on his analysis concluding that the  
22 desired items - do you remember an order list is a  
23 list of desired catalog items - included in results of  
24 searches of product catalogs, and that's what he  
25 called catalog items. That's how he looked at it for

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1 purposes of his analysis. The items you get back from  
2 product catalogs. So he relied on his analysis  
3 involving catalogs actually for all 12 of the claims.

4 So we showed you the testimony of Mr. Shamos,  
5 though, that the Lawson system doesn't have catalogs  
6 and therefore it doesn't infringe any of the 12  
7 claims. It's completely different from all that. And  
8 to illustrate what the Lawson system really is here,  
9 I'm going to show you something. This is from  
10 Plaintiff's Exhibit 361, page 49 of that exhibit, page  
11 2243. The last four digits are 2243. Do you remember  
12 Mr. Weaver showed you some demonstrations.

13 This particular one he didn't talk about. He  
14 didn't present this one to you. In fact, we talked  
15 about it, and this has something called an active  
16 items at requesting location list. This is about the  
17 closest thing in any of ePlus' materials of showing  
18 you what an item master in the Lawson system actually  
19 looks like.

20 It's this list of products. At the far left  
21 is an item number. That's the number that the  
22 customer assigns. The first one is 1007, 1008, 1009.  
23 The customer puts those in there in the order that the  
24 customer enters those item numbers. They have some  
25 descriptions of the products there. You see tape.

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1 Then it goes to steri strips. I guess that's some  
2 sort of a bandage, and so on.

3 These are these very short descriptions that  
4 are only 30 characters or less. So you can see how  
5 abbreviated they are. And you heard the testimony  
6 that those are the things the customer comes up with.  
7 And they're not trying to sell anything here. They're  
8 not trying to give you a big description to entice you  
9 to buy anything. They're just reminding themselves  
10 which one that is because this is the thing they buy  
11 over and over.

12 Over on the far right it talk about that  
13 being tracked. That's their inventory. This is their  
14 own personal inventory. Yes, we track it. Yes, we  
15 monitor our inventory on this thing. This is the  
16 closest thing that ePlus had to show you what the item  
17 master actually looks like. And they have never  
18 linked this or anything else to a published vendor  
19 catalog. It doesn't look like it, and it's from the  
20 customer. This is an organized collection of  
21 information, yes, but it's the customer who organized  
22 it. The vendor never even sees this.

23 So how could the vendor publish this? An  
24 organized collection. And that's what has to be  
25 catalogs here. It just doesn't look like a catalog as

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1 the Court has defined it.

2 So Dr. Weaver never showed either a single  
3 vendor catalog that actually came from a vendor and  
4 said, Oh, look. Here's one of those vendor catalogs  
5 that comes from somebody selling products to a Lawson  
6 customer and compare that now to the item master. Oh,  
7 look, they look similar, don't they? Dr. Weaver never  
8 did that.

9 The reason he didn't do that is because he  
10 wouldn't have been able to show that that comparison  
11 would hold any water.

12 So they talk about what Dr. Weaver did do,  
13 but it's what Dr. Weaver did not do that's the most  
14 important thing here.

15 And they didn't do that even though they  
16 picked four of our customers to give them information  
17 about who our customers are. They picked four of them  
18 to depose and subpoena. And you heard from -- I think  
19 you heard from three of them in the case as it wound  
20 up. Mr. Yuhasz was live, Mr. Matias and Ms. Cimino.  
21 Those are our customers that they picked. They didn't  
22 show you anything in those depositions or documents  
23 that would show catalogs.

24 If we could go to slide No. 51. Actually,  
25 let's go to 52. So Lawson doesn't infringe these



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1 patents because it doesn't have multiple catalogs. It  
2 doesn't have published catalogs. It doesn't have  
3 catalogs published by inventors. We've got very basic  
4 information.

5           The whole purpose of an item master is  
6 different from the purpose of catalogs. Catalogs are  
7 from vendors to sell things. The item master is to  
8 track personal customer's private inventory. Short  
9 descriptions selected by the customers. It's an  
10 inventory list like a shopping list just trying to  
11 keep track of what they've got in stock. Also control  
12 what their employees can buy. That's a big thing here  
13 in comparison and contrast to catalogs.

14           You heard Mr. Robertson talk about comparison  
15 shopping. That's the intent of these patents. Let's  
16 the employees go out there and maybe do some shopping  
17 and things. And that might be good in some  
18 situations. If some customers want to do that, that's  
19 fine. But for some companies, they would say, I don't  
20 want my employees doing that. I just want them to go  
21 buy the pens. I don't want them out there shopping  
22 around looking for new pens that are different or more  
23 expensive or whatever and wasting time on that.

24           The Lawson system is all about control. The  
25 patented system a all about empowerment of the

1 customers. Two very different purposes here.

2 So let's go to the evidence now on the issue  
3 of the catalogs. The testimony showed that Lawson  
4 doesn't have catalogs.

5 Can we go to slide 53, I think it is. This  
6 is Mr. Christopherson's testimony here. Using the  
7 definition the Court just gave for published by a  
8 vendor, is the customer's item master database ever  
9 published by a vendor? The Judge said just answer it  
10 yes or no. Mr. Christopherson then answered no. So  
11 Lawson people showing that the item master is not a  
12 catalog as the Court defined it. Customer testimony  
13 is well.

14 If we go to 55. This is Mr. Yuhasz. He was  
15 the customer that showed up in court here. He was  
16 nice enough to do that from Novant. Is this data in  
17 Novant item master generally known? No.

18 Is the item master data maintained as  
19 private? Yes.

20 And the supporting differences here from the  
21 published catalog. If we go to the next slide, 56.  
22 Mr. Yuhasz actually explained that they already had  
23 the Lawson system that's accused of infringement in  
24 this case with the requisition and purchase order and  
25 inventory control modules, but they were looking for

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1 the ability to have what he called a better option  
2 that we felt had product catalogs. They wanted to be  
3 able to search for more things.

4 They wanted something different from what  
5 Lawson had. Were these features as the Lawson system  
6 as it was installed at Novant did not provide? Yes.

7 Here's his testimony that he, having one of  
8 the accused systems, didn't think it had product  
9 catalogs. He was actually putting it out for bid. He  
10 was willing to write another check for somebody else  
11 to go in and add that capability. Well, there's some  
12 real world market information for you that really  
13 shows why the Lawson system doesn't have catalogs.

14 If we could go to the next slide. This is  
15 the inventor testimony. They didn't talk about the  
16 Lawson system, but they did talk about the parts  
17 master that they acknowledge was like an item master.

18 This again relates to the have your cake and  
19 eat it too, issue. So that parts master that has the  
20 same sort of things like we have on the blow up here,  
21 item part number, a short description, tracking and  
22 inventory, that isn't the same thing as the catalogs  
23 you had in mind as the invention for these  
24 patents-in-suit, right? I don't think so. For me,  
25 no, they aren't the same.

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1           Again, the parts master, that's the same sort  
2 of thing as an item master, correct? Yes.

3           Mr. Momyer. If we go to the next slide.  
4 Again, reinforcing that that RIMS system as of  
5 April '93 had that parts master. That would not meet  
6 the Court's definition of a catalog, Mr. Momyer's  
7 testimony.

8           THE COURT: It says Mr. Kinross.

9           MR. McDONALD: I'm sorry. Is that Kinross?  
10 You're right. It's Mr. Kinross. Thank you.

11           Then go to the next slide. So we're back to  
12 Mr. Momyer again here. This is confirming that that  
13 parts master in the RIMS system, that's parts that a  
14 customer would select, just like in the Lawson item  
15 master. That's what they would track for their  
16 stockroom or inventory. Just like the Lawson item  
17 master.

18           Go to the next slide. This is the third  
19 inventor who testified, Mr. Johnson, now. Again  
20 acknowledging the RIMS system had a parts master, but  
21 he didn't think that it had a catalog, though.

22           Then if we go to the next slide. This is  
23 Mr. Hilliard, their invalidity expert. Of course he's  
24 Mr. No. This was an easy quote to find because  
25 nothing was a catalog for him. But he acknowledged

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1 here with the Court's definition of catalogs that  
2 there were no databases in the RIMS system that met  
3 the Court's definition of catalogs.

4           So you have all of these Lawson witnesses,  
5 all the inventors, even one of ePlus' experts  
6 acknowledging that a parts master, which was just like  
7 an item master, doesn't meet the definition even for  
8 one catalog, let alone multiple catalogs.

9           So who was the only witness in this case who  
10 said Lawson's item master was multiple catalogs? It  
11 was Dr. Weaver. Dr. Weaver's approach, just about any  
12 list of item information is not only a catalog, it's  
13 actually multiple catalogs. That's incredible. It  
14 defies common sense. And we went through that with  
15 him in a couple of ways.

16           If we go to the slide 63. Remember, I asked  
17 him, because he was saying that as long as the  
18 information originated in some part from a vendor,  
19 that meant the vendor actually published the organized  
20 collection. I gave them that example if I had a  
21 personal address book, and I was going to put a phone  
22 number in it that came from a phone book, my address  
23 book if it has one entry from a published phone  
24 company's phone book, my address book has an entry in  
25 it that originated from the phone book, right,

1 Mr. Weaver? Correct.

2 But in that case, even if it's my personal  
3 address book, I didn't publicly disseminate it. I  
4 kept it in my own house. Would you consider that to  
5 be a published phone book? Answer: Well, that data  
6 came from a published phone book, so, yes.

7 So Dr. Weaver said the address book is the  
8 same thing as a published phone book. It doesn't make  
9 any sense. But it doesn't end there.

10 Can we go to the next slide, please. I went  
11 on to talk to Dr. Weaver about how within the item  
12 master -- he had to come up with a way to say this one  
13 database was actually multiple catalogs. So he had to  
14 be a little creative there. What he came up with is  
15 this line of reasoning. So if you search for the word  
16 "blue," you get back results from the Lawson item  
17 master that would be the catalog of blue things  
18 because when you search "blue," you're searching for  
19 the item master description, right? Answer: Yes.

20 If I search for the number five, it would  
21 generate a list of all the things that had a number  
22 five in the description? It would.

23 In your opinion each one of these is a  
24 separate catalog; is that right? Yes.

25 So is there really any limit to the number of

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1 catalogs in the Lawson item master the way you look at  
2 it? No.

3 The Lawson item master has a limitless number  
4 of catalogs according to Dr. Weaver. Mr. Hilliard,  
5 though, would say a parts master, which is just like  
6 an item master, has no catalogs at all. Having their  
7 cake and eating it, too. That's what we have going  
8 on.

9 And that's even established on this last  
10 thing with Mr. Momyer's testimony. If we could go to  
11 slide No. 65. We talked to Mr. Momyer about this part  
12 of their patents-in-suit.

13 Go back to 65, please. Blow up the part  
14 that's yellow. This is in the background section of  
15 the patents. They acknowledge, Well, there are  
16 computer systems out there capable of searching  
17 databases containing a product catalog of a particular  
18 vendor. For example, on CD-ROM.

19 But down here you see around line 10, Well,  
20 those are limited, though, in that only one such  
21 vendor catalog. That's one such vendor catalog is  
22 accessible to a user at any given time.

23 So I asked Mr. Momyer about that since he's  
24 one of the inventors of this thing. If we could go to  
25 No. 66, please. I asked him about that section.

1 Would the fact you could search that single CD-ROM for  
2 products of a certain color, would that mean the  
3 CD-ROM actually contains multiple catalogs depending  
4 on what word you searched with? His answer was: To  
5 me, the catalog would indicate the company you were  
6 buying the product from, he went on to explain.  
7 Bottom line. So it would be a single catalog.

8 So even though you could do keyword searches  
9 and look up all sorts of different words within that  
10 catalog, it's still as you understood it for purposes  
11 of your patent a single catalog, right? Yes.

12 So here is Mr. Momyer applying a little  
13 common sense by saying a catalog is a catalog. It's  
14 not a limitless number of catalogs. But he's one of  
15 the inventors here talking about a part of the patent,  
16 so that's really important here.

17 I talked to Dr. Weaver a little more about  
18 the item master. I think ePlus and their expert knew  
19 that this catalog issue was pretty important from day  
20 one in this case or certainly before trial. And that  
21 the item master and whether it's catalogs is  
22 important. So it's pretty striking, I think, wasn't  
23 it, when we had slide 15 from his presentation which  
24 is my slide No. 67? Do you remember he had these  
25 blocks that he stacked up. I talked to him, and he



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1 said, Those system shown in those systems were a  
2 complete and comprehensive infringing system. It had  
3 everything that had to be infringing, including  
4 multiple catalogs, right? Eleven of the 12 claims  
5 specifically say multiple catalogs or collection of  
6 the catalogs, at least two catalogs. Some variation  
7 on it.

8           So the item master is the catalogs. Dr.  
9 Weaver, where is the item master? Do you remember  
10 that pause? Do you remember he was starrng at that  
11 screen for a long time? This was his own slide he  
12 did. But he starred at it for a long time there  
13 because he knew it wasn't there. And that's really  
14 the story of their whole infringement case. It's just  
15 not there.

16           I want to show you one more thing about  
17 Dr. Weaver's analysis. This has to do with the  
18 selecting catalogs or portions of the database to  
19 search issue. That's not in all the claims here, but  
20 I think it's important to illustrate.

21           67A, if we could go to that. This is the  
22 part of the patent that actually talks without  
23 selecting catalogs to search. You get a choice of  
24 some catalogs. In the example here they have four.  
25 It doesn't have to be these four, obviously, but this

1 least two attorneys here at all times so I can be reached by  
2 phone. I'm just right down here at the Hilton Garden Inn, so I  
3 can be here in four minutes.

4 THE COURT: Do you have to trade shoes or can you --

5 MR. ROBERTSON: I come equipped. I will be right  
6 over here pronto, but we'll have somebody here at all times.

7 THE COURT: That's fine.

8 MR. ROBERTSON: All right. Thank you.

9 THE COURT: Now, is he coming back? Mr. McDonald or  
10 Ms. Stoll-DeBell?

11 MR. CARR: As far as I know, he's not coming back.

12 THE COURT: Well, then, I know not to schedule any  
13 arguments, I guess, until I'm certain. All right. I guess  
14 that solves it for now. Thank you very much. We'll be in  
15 adjournment.

16

17 (Court adjourned.)

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